



D.C. Criminal Code Reform Commission

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February 7, 2022

The Honorable Charles Allen
Chairman of the Committee on the Judiciary and Public Safety
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W., Suite 109
Washington D.C. 20004

RE: Criminal Code Reform Commission Responses to Performance Oversight Questions.

Dear Chairman Allen:

Thank you for the opportunity to provide responses to the performance oversight questions in the Committee on the Judiciary and Public Safety's correspondence dated January 18, 2021. The responses of the Criminal Code Reform Commission (CCRC) are presented below for your review, with attached appendices. I look forward to providing testimony and discussing these and any other questions you might have at the agency's oversight hearing.

Sincerely,

Richard Schmechel
Executive Director

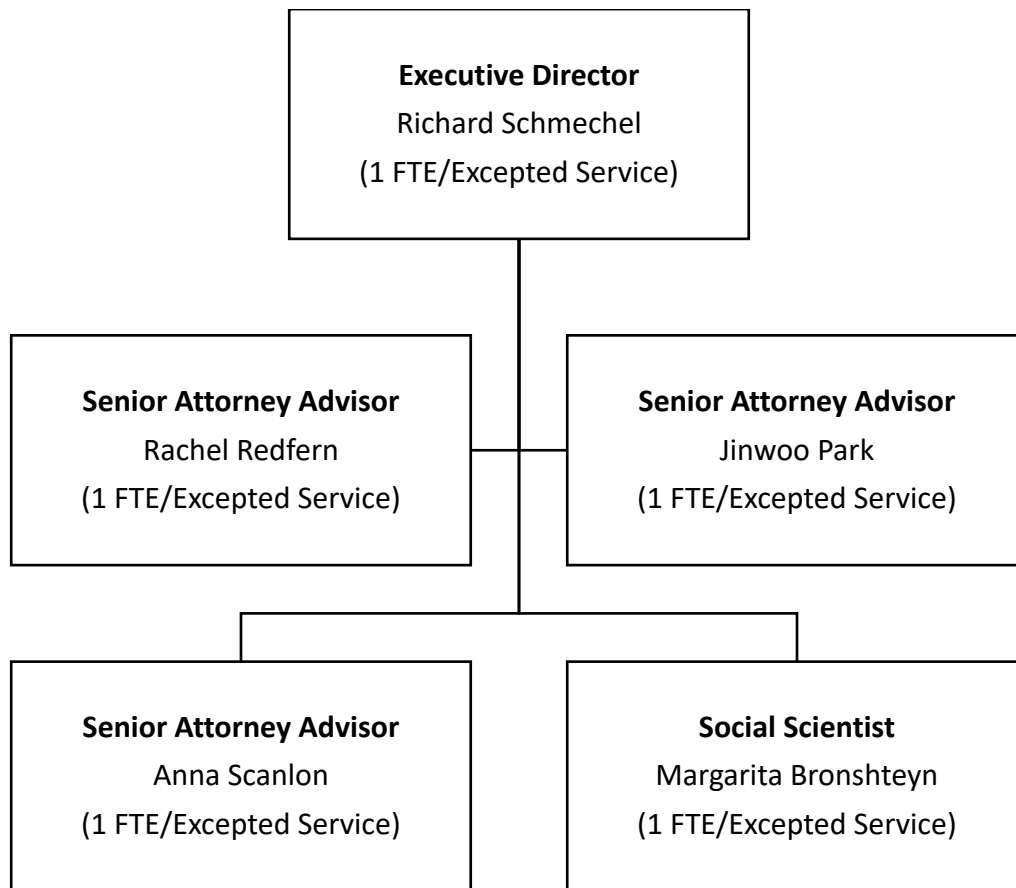
Attachments

1. Appendix A – CCRC Schedule A (1-25-22)
2. Appendix B – CCRC Advisory Group Agendas and Minutes FY21 and FY22 (To Date)

General Questions

- 1. Please provide a current organizational chart for the agency, including the number of vacant, frozen, and filled positions in each division or subdivision. Include the names and titles of all senior personnel, and note on the chart the date the information was collected.**

As of 2/1/22 the agency has 0 vacant, 0 frozen, and 5 filled positions.



- a. Please provide an explanation of the roles and responsibilities of each division and subdivision.**

The CCRC has no divisions or subdivisions.

- b. Please provide a narrative explanation of any changes to the organizational chart made during the previous year.**

In December 2020 an attorney advisor resigned, resulting in a vacancy that was subsequently filled by the hiring of Anna Scanlon in April 2021.

2. **Please provide a current Schedule A for the agency *in Excel format* which identifies each filled, vacant, unfunded, and funded position by program and activity code, with the employee's name (if filled), title/position, salary, fringe benefits, and length of time with the agency (if filled). Please note the date the information was collected. The Schedule A should also indicate if the position is continuing/term/temporary/contract or if it is vacant or frozen. Please separate salary and fringe into separate columns and indicate whether the position must be filled to comply with federal or local law.**

Please see the Excel sheet attached as Appendix A to this document. The agency has only one program code (1001) and activity code (1010). None of the positions must be filled to comply with federal or local law.

3. **Please list all employees detailed to or from your agency during FY21 and FY22, to date. For each employee identified, please provide the name of the agency the employee is detailed to or from, the reason for the detail, the date of the detail, and the employee's projected date of return.**

CCRC staff Rachel Redfern and Jinwoo Park have been detailed to the Council Committee on the Judiciary and Public Safety as of 4/1/21, to date, for the purposes of providing subject matter expertise, including legislative drafting and legal guidance, on legislation to codify the CCRC recommendations for code reform. Both employees are expected to return on December 31, 2022, or earlier if agreed to by the parties.

4. **Please provide the Committee with:**

- a. **A list of all vehicles owned, leased, or otherwise used by the agency and to whom the vehicle is assigned, as well as a description of all vehicle collisions involving the agency's vehicles in FY21 and FY22, to date; and**

None

- b. **A list of travel expenses, arranged by employee for FY21 and FY22, to date, including the justification for travel.**

None.

5. **Please list all memoranda of understanding ("MOU") entered into by the agency in FY21 and FY22, to date, as well as any MOU currently in force. For each, indicate the date into which the MOU was entered and the termination date.**

MOU in connection with purchase or sale of services to District agencies are further described in the response to question #7, below. The OFRM MOU, extant in FY21 and FY22, provides funding for use of the District Purchase Card, the primary means of purchasing for the agency, given its small size. The DCHR MOU, extant in FY21 only, provided funding for HR services provided to the agency.

The CCRC also has a no cost restricted data use agreement (RDU A , extant in FY21 and FY22, with the DC Courts that allows the agency to have access to certain court data and to conduct limited analyses. The current version of the RDU A was entered into 4/14/19 and does not have an expiration date.

The CCRC also has a MOU—referenced in the response to question #4, above—with the Council Committee on the Judiciary and Public Safety, extant as of 4/1/21 and continuing through CY 2022, regarding the detail of two employees.

6. Please list the ways, other than MOU, in which the agency collaborated with analogous agencies in other jurisdictions, with federal agencies, or with non-governmental organizations in FY21 and FY22, to date.

The CCRC's Advisory Group, per the CCRC statute, included representatives of the Deputy Mayor for Public Safety, the Council Committee on the Judiciary and Public Safety, the Attorney General for the District of Columbia, the Director of the Public Defender Service for the District of Columbia, and the United States Attorney for the District of Columbia. The CCRC Advisory Group completed its work March 31, 2021 and no longer exists as an entity. However, the CCRC continually works with these institutions and their representatives to develop criminal code reform recommendations.

The Executive Director also participated in 2021 as a Liaison on behalf of the agency to the American Law Institute's Model Penal Code Sexual Assault Project.

In conjunction with the agencies release of its March 31, 2021 code reform recommendations to the Mayor and Council and its October 1, 2021 submission to the Council of the Revised Criminal Code Act of 2021 (RCCA), the agency also has engaged in a wide array of consultations with other non-governmental organizations. These organizations include criminal law reform organizations (e.g. the D.C. Justice Lab) and organizations with interests in criminal law (e.g., the American Civil Liberties Union (ACLU) and the Network for Victim Recovery of DC (NVRDC)).

7. For FY21 and FY22, to date, please list all intra-District transfers to or from the agency, and include a narrative description of the purpose of each transfer.

The OFRM transfer provides funding for use of the District Purchase Card, the primary means of purchasing for the agency, given its small size.

The OCTO transfers provide funding for basic IT services—internet and phone—for the agency.

In FY21 (only) the agency had an MOU with DCHR to provide basic HR services.

FY 2021 INTRA-DISTRICT - SELLER SUMMARY				
MA0				
DISTRICT OF COLUMBIA CRIMINAL CODE REFORM COMMISSION				
BUYING AGENCY	DESCRIPTION OF SERVICES PROVIDED	AMOUNT	START DATE	END DATE
	NONE		10/1/2020	9/30/2021
TOTAL		\$ -		
FY 2021 INTRA-DISTRICT - BUYER SUMMARY				
MA0				
DISTRICT OF COLUMBIA CRIMINAL CODE REFORM COMMISSION				
SELLING AGENCY	DESCRIPTION OF SERVICES PROVIDED	AMOUNT	START DATE	END DATE
DCHR	Support CCRC HR related services	\$ 4,498	10/1/2020	9/30/2021
OFRM	Agency Pcard purchases	\$ 10,000	10/1/2020	9/30/2021
OCTO	DCNet and Non-DCNet assessment	\$ 5,620	10/1/2020	9/30/2021
TOTAL		\$ 20,118		
FY 2022 INTRA-DISTRICT- SELLER SUMMARY				
MA0				
DISTRICT OF COLUMBIA CRIMINAL CODE REFORM COMMISSION				
BUYING AGENCY	DESCRIPTION OF SERVICES PROVIDED	AMOUNT	START DATE	END DATE
	NONE		10/1/2021	9/30/2022
TOTAL		\$ -		
FY 2022 INTRA-DISTRICT - BUYER SUMMARY				
MA0				
DISTRICT OF COLUMBIA CRIMINAL CODE REFORM COMMISSION				
SELLING AGENCY	DESCRIPTION OF SERVICES PROVIDED	AMOUNT	START DATE	END DATE
OFRM	Agency Pcard purchases	\$ 20,000	10/1/2021	9/30/2022
OCTO	DCNet and Non-DCNet assessment	\$ 6,068	10/1/2021	2/28/2022
TOTAL		\$ 26,068		

8. For FY21 and FY22, to date, please identify any special purpose revenue funds maintained by, used by, or available for use by the agency. For each fund identified, provide:

- a. The revenue source name and code;
- b. The source of funding;
- c. A description of the program that generates the funds;
- d. The amount of funds generated by each source or program;
- e. Expenditures of funds, including the purpose of each expenditure;
- f. Whether expenditures from the fund are regulated by statute or policy, and if so, how; and
- g. The current fund balance.

No special purpose revenue funds of any kind.

9. For FY21 and FY22, to date, please list all purchase card spending by the agency, the employee making each expenditure, and the general purpose of each expenditure.

Transaction Date	\$ Amount	Purchaser	Purpose
10/8/2020	3,654.00	J. Park	Legal Research Online Services
10/8/2020	25.26	J. Park	Office supplies
10/15/2020	29.08	J. Park	Office supplies
10/15/2020	67.83	J. Park	Office supplies
1/9/2020	25.57	J. Park	Office supplies
1/25/2021	2,400.00	J. Park	Data Analysis
4/1/2021	14.99	M. Bronshteyn	Video conferencing
4/24/2021	116.59	M. Bronshteyn	Office supplies
4/25/2021	14.99	M. Bronshteyn	Video conferencing
4/29/2021	27.56	M. Bronshteyn	Legal Research Materials
5/8/2021	-6.6	M. Bronshteyn	Partial Refund of Office supplies
5/25/2021	14.99	M. Bronshteyn	Video conferencing
6/10/2021	189	M. Bronshteyn	Legal Research Materials
6/25/2021	14.99	M. Bronshteyn	Video conferencing
7/25/2021	14.99	M. Bronshteyn	Video conferencing
7/30/2021	49.95	M. Bronshteyn	Legal Research Online Services
8/16/2021	94	M. Bronshteyn	Legal Research Materials
8/17/2021	7.62	M. Bronshteyn	Office supplies
8/17/2021	16.98	M. Bronshteyn	Office supplies
8/25/2021	14.99	M. Bronshteyn	Video conferencing
8/31/2021	1,379.00	M. Bronshteyn	1 Laptop computer
9/3/2021	51.07	M. Bronshteyn	Office supplies
9/19/2021	89.99	M. Bronshteyn	Office supplies
10/1/2021	42.4	M. Bronshteyn	Legal Research Online Services
10/1/2021	146.03	M. Bronshteyn	Video conferencing subscription
10/1/2021	3,836.76	M. Bronshteyn	Legal Research Online Services
10/5/2021	-2.4	M. Bronshteyn	Partial Refund of Legal Research Online Services
1/19/2022	94	M. Bronshteyn	Legal Research Materials

10. Please list all capital projects in the financial plan for the agency or under the agency's purview in FY21 and FY22, to date, and provide an update on each project, including the amount budgeted, actual dollars spent, and any remaining balances (please also include projects for the benefit of the agency that are in the budget of the Department of General Services or another agency). In addition, please provide:
- A narrative description of all capital projects begun, in progress, or concluded in FY20, FY21, and FY22, to date, including the amount budgeted, actual dollars spent, any remaining balances, and the work undertaken;

- b. An update on all capital projects planned for the four-year financial plan;
- c. A description of whether the capital projects begun, in progress, or concluded in FY20, FY21, and FY22, to date, had an impact on the operating budget of the agency. If so, please provide an accounting of such impact; and
- d. A description and the fund balance for any existing allotments.

None.

11. Please provide a list of all budget enhancement requests (including capital improvement needs) for FY21 and FY22, to date. For each, include a description of the need and the amount of funding requested.

The CCRC made no budget enhancement requests for FY 21 and FY 22, to date.

12. Please list, in chronological order, each reprogramming in FY21 and FY22, to date, that impacted the agency, including those that moved funds into the agency, out of the agency, or within the agency. Include known, anticipated reprogrammings, as well as the revised, final budget for your agency after the reprogrammings. For each reprogramming, list the date, amount, rationale, and reprogramming number.

DISTRICT OF COLUMBIA CRIMINAL CODE REFORM COMMISSION							
FY 2022 REPROGRAMMING LIST							
	LOCAL					Starting Budget	\$907,173
FISCAL YEAR	FUND	DATE	SOAR DOC #	Program	Activity	DESCRIPTION	AMOUNT
2022	0100					NONE	\$0
						Final Budget	\$907,173

DISTRICT OF COLUMBIA CRIMINAL CODE REFORM COMMISSION							
FY 2021 REPROGRAMMING LIST							
	LOCAL					Starting Budget	\$813,017
FISCAL YEAR	FUND	DATE	SOAR DOC #	Program	Activity	DESCRIPTION	AMOUNT
2021	0100	8/23/2021	BJ09021	1001	1010	FY21 SUPPLEMENTAL	(\$4,212)
						Final Budget	\$808,805

13. Please list each grant or sub-grant received by your agency in FY21 and FY22, to date. List the date, amount, source, purpose of the grant or sub-grant received, and amount expended.
- a. How many FTEs are dependent on grant funding?
 - b. What are the terms of this funding?
 - c. If it is set to expire, what plans, if any, are in place to continue funding the FTEs?

No grants or sub-grants.

- 14. Please list each grant or sub-grant granted by your agency in FY21 and FY22, to date. List the date, amount, source, and purpose of the grant or sub-grant granted.**

None.

- 15. Please list each contract, procurement, and lease entered into or extended and option years exercised by your agency during FY21 and FY22, to date. For each contract, procurement, or lease, please provide the following information, where applicable:**

- a. The name of the party;**
- b. The nature of the contract, procurement, or lease, including the end product or service;**
- c. The dollar amount of the contract, procurement, or lease, including amount budgeted and amount actually spent;**
- d. The term of the contract, procurement, or lease;**
- e. Whether it was competitively bid;**
- f. The name of the agency's contract monitor(s) and the results of any monitoring activity; and**
- g. The funding source.**

The agency entered into one contract for services in this timeframe.

Contract #CW88201

- a. Party:** Justice Policy Institute
- b. Nature:** Strategic communications and public relations services
- c. Amount:** \$175,000 (budgeted, contract currently underway, with \$43,750 in funds spent to date)
- d. Term:** 10-1-21 to 9-30-22 (option year exercised under contract begun in FY21)
- e. Competitively Bid:** No, sole source contracting procedures were followed by OCP
- f. Contract Monitor:** Contract Officer OCP Yvonne Howerton; Contract Administrator CCRC Richard Schmechel – No issues to date
- g. Funding Source:** Local funds

- 16. Please list and describe all pending and closed lawsuits that name or named the agency or agency leadership as parties in FY21 and FY22, to date (include the parties' names, docket number, and date the case was filed and/or closed), include a narrative explanation of the specific issues involved in each case, and describe the current status of the litigation. Identify which cases on the list are lawsuits that potentially expose the District to significant financial liability or could result in a change to agency practices.**

No pending or closed lawsuits.

- 17. Please list all judgments against and settlements executed by the agency or by the District on behalf of the agency, of any amount, in FY21 or FY22, to date, and provide the parties' names, the date on which the judgment was issued or settlement was executed, the amount of the judgment or settlement, and if related to litigation, the case name, docket number, and a brief description of the case. Include non-monetary costs such as backpay and leave restoration. If unrelated to litigation, please describe the underlying issue or reason for the judgment or settlement (e.g. excessive use of force, wrongful termination, sexual harassment). Please also describe any matters which are currently in settlement negotiations or for which a judgment is imminent.**

No judgments or settlements.

- 18. Did the agency use outside counsel in FY21 and FY22, to date? If so, for what matter(s) and in what amount(s)?**

No use of outside counsel.

- 19. Please list the complaints, grievances, or similar charges – whether informal or formal and whether handled internally or externally – that the agency received or otherwise responded to in FY21 and FY22, to date, broken down by source. Please describe the process utilized to respond to any complaints, grievances, or similar charges and any changes to agency policies or procedures that may have resulted. For any complaints, grievances, or similar charges that were resolved in FY21 or FY22, to date, describe the resolution. Specifically note any matters that implicated agency senior staff or leadership.**

No administrative complaints or grievances received. Should a complaint or grievance arise, the agency would follow standard District Personnel Manual practices and procedures.

- 20. Please describe the agency's procedures for investigating allegations of sexual harassment, sexual misconduct, or discrimination committed by or against agency employees. List and describe any allegations relating to the agency or its employees in FY21 and FY22, to date, and whether and how those allegations were resolved, whether internal or external (e.g. a specific disciplinary action, such as re-training, employee transfer, suspension, or termination, or an investigation).**

The agency policy is to follow the District Personnel Manual in investigating complaints and grievances. The agency has coordinated with DCHR so that their designated Sexual Harassment Officer is available to any CCRC employee. Although the CCRC is a small, independent agency not subordinate to the Mayor, this action was taken to comply with the 12/18/17 Mayor's Order regarding Sexual Harassment Officers.

The CCRC has not received any allegations of sexual harassment or discrimination to date.

- a. **Please also identify whether the agency became aware of any similar matters in FY21 or FY22, to date, through means other than an allegation, and if so, how the matter was resolved (e.g. sexual harassment was reported to the agency, but not by the alleged victim).**

None.

- 21. Please provide a list of the total workers' compensation payments paid by the agency or on the agency's behalf in FY21 and FY22, to date, including the number of employees who received workers' compensation payments, in what amounts, and for what reasons.**

None.

- 22. Please list and describe any ongoing internal or external investigations, audits, or reports on the agency or any employee of the agency, or any internal or external investigations, studies, audits, or reports on the agency or any employee of the agency that were completed during FY21 and FY22, to date.**

None.

- 23. Please describe any spending pressures the agency experienced in FY21 and any anticipated spending pressures for the remainder of FY22. Include a description of the pressure and the estimated amount. If the spending pressure was in FY21, describe how it was resolved, and if the spending pressure is in FY22, describe any proposed solutions.**

The CCRC did not experience any spending pressures in FY21 and at this time has no anticipated spending pressures for the remainder of FY22 if there is no reduction in its appropriated funds.

However, the agency notes that in both FY21 the agency's financial status was extremely uncertain, resulting in reduced agency spending on planned purchases and year-end budget surpluses. In FY21, the possibility of a mid-year reduction in funding due to the public health emergency forced the agency to forestall spending to cover the possible reduction. Given the agency's small size and the fact that nonpersonal services (NPS) make up a very small fraction of the budget, the possibility of cuts (even of a few percent) effectively freezes all discretionary spending in order to assure that the agency has funds to cover the proposed cuts.

- 24. Please provide a copy of the agency's FY21 performance plan. Please explain which performance plan objectives were completed in FY21 and whether they were completed on time and within budget. If they were not, please provide an explanation.**

None. The CCRC has not been required to, and did not submit, a performance plan. In FY22, the agency will explore adoption of a performance plan.

- 25. Please provide a copy of your agency's FY22 performance plan as submitted to the Office of the City Administrator.**

None. The CCRC has not been required to, and did not submit, a performance plan. In FY22, the agency will explore adoption of a performance plan.

- 26. Please describe any regulations promulgated by the agency in FY21 or FY22, to date, and the status of each.**

None.

- 27. Please provide the number of FOIA requests for FY21 and FY22, to date, that were submitted to your agency. Include the number granted, partially granted, denied, and pending. In addition, please provide the average response time, the estimated number of FTEs required to process requests, the estimated number of hours spent responding to these requests, and the cost of compliance.**

None.

- 28. Please provide a list of all studies, research papers, reports, and analyses that the agency prepared or for which the agency contracted during FY21 and FY22, to date. Please state the status and purpose of each. Please submit a hard copy to the Committee if the study, research paper, report, or analysis is complete.**

All the following documents are completed, required reports per the agency's statute. They have previously been distributed to the full Council and are available on the Council's Legislative Information Management System (LIMS) or the agency's website, www.ccrdc.dc.gov).

- CCRC FY 2020 Fourth Quarter Report of Activities (issued 11/20/20)
- CCRC 2020 Annual Report and FY 2021 First Quarter Report of Activities (issued 3/26/21)

In addition, the following completed reports (containing draft reform recommendations) and memoranda (containing background materials relevant to reform recommendations) were issued either to the agency's Advisory Group in FY21 or for general public review since the completion of the Advisory Group's work on March 31, 2021. The title of the document indicates the topic / purpose of the report. The documents are available on the agency's website pages: <https://ccrc.dc.gov/page/recommendations> and <https://ccrc.dc.gov/page/ccrc-documents>. Hardcopies are also available to the Committee upon request. These FY21 and FY22 (to date) reports total thousands of pages.

Report (Draft #)	Issued to Group	Comments Received	Title
68 (1 st)	12/24/2020	1/29/2021	Cumulative Update to the Revised Criminal Code
69 (1 st)	1/15/2021	2/15/2021	Cumulative Update to Class Imprisonment Terms and Classification of RCC Offenses
70 (1 st)	3/10/2021	3/24/2021 (final meeting)	Criminal Code Reform Commission (CCRC) Recommendations for the Council and Mayor (Voting Draft) and Supporting Materials
71 (1 st)	10/5/2021	11/16/2021	Terrorism Offenses
72 (1 st)	10/5/2021	11/16/2021	Obstruction of Justice Offenses
73 (1 st)	10/5/2021	11/16/2021	Bigamy
74 (1 st)	10/5/2021	11/16/2021	Repeal of Throwing Stones or Other Missiles, Kindling Bonfires, and Redundant Pollution Statutes
71 (2 nd)	2/1/2022	pending	Terrorism Offenses
72 (2 nd)	2/1/2022	pending	Obstruction of Justice Offenses
73 (2 nd)	2/1/2022	pending	Bigamy
75 (1 st)	2/1/2022	pending	Resisting Arrest
76 (1 st)	2/1/2022	pending	Perjury and Other Falsification Offenses

Memo	Issued	Title
39	12/24/2020	Supplemental Materials to the First Draft of Report #68
40	12/31/2020	Statistics on District Adult Criminal Charges and Convictions
41	1/15/2021	Supplemental Materials to the First Draft of Report #69
42	3/10/2021	Supplemental Materials to the First Draft of Report #70

On September 10, 2021 the agency also released on its website a statistical analysis entitled “Analysis of Life, Life-Equivalent, and Long-Term Sentences in the District of Columbia 2010-2019.” Also, please note that on October 1, 2021 the CCRC submitted to Chairman Mendelson for introduction in the Council the Revised Criminal Code Act of 2021.

- 29. Please list in descending order the top 25 overtime earners in your agency in FY21 and FY22, to date, if applicable. For each, state the employee’s name, position number, position title, program, activity, salary, fringe, and the aggregate amount of overtime pay earned. Please describe the process the agency uses to determine which employees are granted overtime.**

No overtime earners.

- 30. For FY21 and FY22, to date, please provide a list of employee bonuses or special pay granted that identifies the employee receiving the bonus or special pay, the amount received, and the reason for the bonus or special pay.**

None.

- 31. For FY21 and FY22, to date, please list each employee separated from the agency with separation pay. State the amount and number of weeks of pay. Also, for each, state the reason for the separation.**

None.

- 32. Please provide the name of each employee who was or is on administrative leave in FY21 and FY22, to date. In addition, for each employee identified, please provide: (1) their position; (2) a brief description of the reason they were placed on leave; (3) the dates they were/are on administrative leave; (4) whether the leave was/is paid or unpaid; and (5) their current status.**

None.

- 33. Please provide each collective bargaining agreement that is currently in effect for agency employees. Include the bargaining unit and the duration of each agreement. Note if the agency is currently in bargaining and its anticipated completion.**

None.

- 34. If there are any boards, commissions, or task forces associated with your agency, please provide a chart listing the names, number of years served, agency affiliation, and attendance of each member. Include any vacancies. Please also attach agendas and minutes of each board, commission, or task force meeting in FY21 or FY22, to date, if minutes were prepared. Please inform the Committee if the board, commission, or task force did not convene during any month.**

The Criminal Code Revision Advisory Group (Advisory Group) was a statutorily designated group of stakeholders who reviewed and provided information and suggestions on proposals prepared by the CCRC. The Advisory Group consisted of 5 voting members and 2 nonvoting members and completed its work in FY21, on March 31, 2021. There were no vacancies during the Advisory Group's operation in FY21.

Name	Confirmation / Appointment Date or Start of Appointment	Term	FY21 Meeting Attendance
Donald Braman	10/18/16 - Appointed by Council	10/1/16 -	6/7
Paul Butler	10/18/16 – Appointed by Council	10/1/16 -	5/7
Elana Suttenger	10/22/20 - Designee of the United States Attorney for the District of Columbia	NA	7/7
Laura Hankins	10/1/16 - Designee of the Director of the Public Defender	NA	7/7

	Service for the District of Columbia		
Dave Rosenthal	10/1/16 - Designee of the Attorney General for the District of Columbia	NA	7/7
Helder Gil	10/1/16 - Designee of the Deputy Mayor for Public Safety and Justice	NA	0/7
Kevin Whitfield	2/25/18 - Designee of the Chairperson of the Council Committee on the Judiciary and Public Safety (Prior designees in place since 10/1/16)	NA	6/7

Copies of the agendas and minutes of all Advisory Group meetings are posted on the agency's website at <https://ccrc.dc.gov/page/ccrc-advisory-group> and are attached as Appendix B (CCRC Advisory Group Agendas and Minutes FY21).

- 35. Please list all reports or reporting currently required of the agency in the District of Columbia Code or Municipal Regulations. Provide a description of whether the agency is in compliance with these requirements, and if not, why not (e.g. the purpose behind the requirement is moot, etc.).**

The CCRC is required to submit an annual report to the Council on its previous year's activities. The agency currently is in compliance with this requirement, having submitted its 2020 Annual report on March 26, 2021 and the 2021 Annual report being due by March 31, 2021.

Prior legislation required the CCRC to submit quarterly and annual reports on the agency's activities. The agency timely met these requirements through their expiration in FY21.

- 36. Please provide a list of any additional training or continuing education opportunities made available to agency employees in FY21 and FY22, to date. For each additional training or continuing education program, please provide the subject of the training, the names of the trainers, and the number of agency employees trained.**

The CCRC staff receives training through a variety of standard classes provided by DCHR (e.g., cybersecurity, use of the District Purchase Card, ethics, sexual harassment awareness,

etc.). On an ad hoc basis, staff are provided the opportunity to use work time to attend relevant D.C. Bar and community events for training and educational purposes.

- 37. Please describe any initiatives that the agency implemented in FY20 or FY21, to date, to improve the internal operations of the agency or the interaction of the agency with outside parties. Please describe the results, or expected results, of each initiative.**

In FY21 and FY22 to date, the agency has not initiated new improvements to internal operations other than changes necessitated by the public health emergency—changing regular meeting schedules with the Advisory Group (until March 31, 2021), moving to all-digital document production, and using new online document and communication platforms.

- 38. What are the agency's top five priorities? Please explain how the agency expects to address these priorities in the remainder of FY21. How did the agency address its top priorities listed for this question last year?**

Priority #1: Technical assistance to support review of the Revised Criminal Code Act of 2021 (RCCA). The agency's top priority for the year is providing technical assistance to the Council, and the public more broadly, in relation to the RCCA, submitted to the Council October 1, 2021. The agency already has provided extensive oral and written testimony in conjunction with the three hearings on the RCCA in 1Q 2022, in addition to engaging in discussions with a range of stakeholders and members of the public who are interested in the legislation. Due to the length and complexity of the RCCA, continued efforts to explain RCCA provisions and field questions are expected as legislative consideration of the bill proceeds. In addition, technical assistance is also expected to be necessary to ensure any amendments to the RCCA are drafted in a manner that is consistent with other RCCA provisions and there are no unintended effects of such amendments. The agency's supporting legal commentary, statistics, and other background materials submitted with the agency's March 31, 2021 recommendations to the Council and Mayor may also need to be updated in light of any changes to the revised statutory language

Priority #2: Issue supplemental code reform recommendations regarding criminal statutes not addressed in the RCCA. The agency's second priority for the year is to develop additional criminal code reform recommendations for statutes that were not addressed in the RCCA (e.g. obstruction of justice, terrorism). As part of the development of these supplemental recommendations the agency will post draft language on the agency's website and invite public comment. In addition, the CCRC specifically will invite former Advisory Group members to provide written and oral comments on draft reform recommendations (on an informal basis, not subject to the statutory strictures in D.C. Code § 3-153 that ended with the completion of the Advisory Group's work on March 31, 2021).

Priority #3: Conduct legal and/or policy analysis of proposed legislation before the D.C. Council. The third priority for the agency is to review new criminal legislation under consideration by the Council. On an ongoing basis the agency reviews introduced criminal legislation and legislation that has a Council hearing scheduled. If the Council requests

CCRC analysis per D.C. Code § 3-152(d), the agency will complete analysis of the matter. If the legislation concerns a topic that the CCRC has prior experience with, or the legislation relates to a prior agency recommendation, the agency also will prioritize analysis of the legislation and provide comments to the Council Committee.

Priority #4: Research possible reforms to criminal statutes in Titles 23 and 24 of the D.C. Code.¹ The fourth priority for the year ahead is to develop reform recommendations regarding statutory provisions in titles of the D.C. Code concerned with various criminal procedure, sentencing, and incarceration provisions. Many of these statutes have not been significantly reviewed or revisited in nearly 50 years, since the beginning of home rule (if not earlier). The agency will solicit community and expert views and identify models regarding sentencing and procedure to develop a list of possible reform priorities. The agency will then conduct initial research on these priorities and issue a written assessment of statutes for possible reform.

Priority #5: Review and take measures to improve staff training and hiring/retention. The agency's final push to release its March 31, 2021 reform recommendations and the October 1, 2021 RCCA legislation, in concert with the difficulties of the Covid-19 public health emergency, have been difficult for staff. Training has been suspended, vacations delayed, longer-term planning postponed. At a time when the agency is turning the corner to a different mission as a permanent agency, the agency needs to reprioritize making sure that staff have the time and opportunity to thrive in the workplace. The agency will provide time and limited funding for external trainings (remote or, health restrictions permitting, in-person), encourage employees to utilize accrued vacation time, and engage in staff-wide planning sessions regarding future agency priorities.

The agency addressed the top three of its five priorities listed for this question in last year's oversight materials. Most importantly, the agency successfully finalized and submitted its code reform recommendations by the statutory deadline of March 31, 2021. The agency also engaged in communications outreach regarding the reform recommendations, in conjunction with its new public relations/communications contractor, the Justice Policy Institute. New code reform recommendations also were drafted on an array of statutes (e.g. terrorism, obstruction of justice) that were not addressed in the March 31, 2021 code reform recommendations or RCCA. However, little action was taken to review Title 23 and Title 24 criminal statutes for possible reform, or to engage in longer term planning and staff development. The agency's capacity to develop new criminal code reform recommendations and to retool staff for that purpose was limited by the need to further support legislative and public consideration of the March 31, 2021 code reform recommendations. The interest of the Council in the agency's recommendations, the development of the RCCA bill in consultation with the Council's Office of General Counsel, and preparations and technical support regarding the extensive public hearings on the RCCA required a substantial shift from the priorities referenced a year ago.

¹ Other titles with related provisions may also be examined. For instance, D.C. Code § 5-335.01 specifies the District's "post-and-forfeit" procedure, which is related to the field arrest provisions in D.C. Code §23-584.

39. Please list each new program implemented by the agency during FY21 and FY22, to date. For each initiative, please provide:

- a. A description of the initiative;**
- b. The funding required to implement the initiative; and**
- c. Any documented results of the initiative.**

None. The agency consists of one program.

40. How does the agency measure programmatic success? Please discuss any changes to outcomes measurement in FY21 and FY22, to date.

The agency evaluates operational success by measuring its development of recommendations for changes to criminal statutes according to the CCRC's statutory goals, the production of well-researched supporting commentary and relevant statistics, and responsiveness to Advisory Group members and any District or public queries. While the agency tracks the number of statutes for which it has developed draft reform recommendations, and the number of draft reports issued to its Advisory Group, the qualitative aspects of the agency's work (e.g., complexity of legal analysis involved and degree of improvement to the D.C. Code's clarity) are extremely difficult to measure.

The CCRC does not have a performance plan or performance measures and the Office of the City Administrator has not required the agency to submit a performance plan.

41. What are the top metrics and KPIs regularly used by the agency to evaluate its operations? Please be specific about which data points are monitored by the agency.

See response to Question #40, above.

42. Please identify whether, and if so, in what way, the agency engaged The Lab @ DC in FY21 and FY22, to date.

The CCRC has had no engagement with The Lab @ DC in this timeframe.

43. Please list the task forces and organizations of which the agency is a member.

The agency was invited to join a EOM task force on Local Parole Agency Planning – specifically, the Budget & Legislation Working Group.

44. Please explain the impact on your agency of any federal legislation passed during FY21 and FY22, to date, which significantly affected agency operations.

Federal legislation in this timeframe does not significantly affect agency operations, although a Congressional appropriations restriction may affect some of the agency's code reform recommendations related to controlled substances.

Under Congressional appropriations legislation, District expenditures to “enact or carry out any law, rule, or regulation to legalize or otherwise reduce penalties associated with the possession, use, or distribution of any schedule I substance ...” have been prohibited.² The CCRC, in consultation with other authorities, has concluded that this appropriations provision does not restrict the CCRC from developing recommendations for changes to District controlled substance crimes or penalties. However, this appropriations provision would prevent full Council enactment of any CCRC recommendations to change drug offense penalties—if the Congressional funding restriction is still in place at that time. On its face, the appropriations provision does not prohibit changes to statutory definitions for drug offenses, changes relating to drug paraphernalia, or changes regarding possession of a weapon in connection with a drug offense.

45. Please describe any steps the agency took in FY21 and FY22, to date, to improve the transparency of agency operations, including any website upgrades or major revisions.

In FY21 the agency reorganized and updated its website to improve transparency. All draft and final criminal code reform recommendations are posted on the website, in addition to administrative compliance matters, Council testimony, and comments received from the Advisory Group on all code reform matters.

46. Please identify all electronic databases maintained by your agency, including the following:

- a. A detailed description of the information tracked within each system;**
- b. The age of the system and any discussion of substantial upgrades that have been made or are planned to the system; and**
- c. Whether the public can be granted access to all or part of each system.**

No electronic databases are maintained.

47. Please provide a detailed description of any new technology acquired in FY21 and FY22, to date, including the cost, where it is used, and what it does. Please explain if there have there been any issues with implementation.

The CCRC purchased one new laptop computer in FY21 for a total of \$1,379. The technology was provided to agency staff to facilitate their teleworking during the pandemic. No other significant technology expenditures have been made during this timeframe.

Agency-Specific Questions

48. The CCRC fulfilled its statutory mandate of issuing criminal code reform recommendations through its submission of a report on March 31, 2021. Please

² Section 809 of 113 P.L. 235.

describe any work the CCRC conducted related to that mandate in FY21 or FY22, to date.

The CCRC engaged in intensive work during the first half of FY21 to complete its years-long development of comprehensive criminal code reform recommendations. Multiple reports containing draft recommendations were issued during this time (see response to question #28, above), there was extensive exchange of comments with the agency's Advisory Group and seven virtual meetings were held with its members (see response to question #51, below).

On its statutory deadline of March 31, 2021 the agency submitted to the Council and Mayor a report containing its final reform recommendations as part of its statutory mandate under D.C. Code § 3–152. The report consisted of: 1) statutory text for a new Title 22 and other D.C. Code offenses, comprised of a general part (providing common definitions and rules of liability applicable to revised offenses) and a new special part (consisting of nearly 300 offenses and gradations); 2) a detailed legal commentary explaining how and why the revisions change current District law; 3) an appendix providing a copy of all Advisory Group written comments on the drafts and final versions of recommendations; and 4) appendices providing statistical information on charging and sentencing, practices in other jurisdictions, and other background information. Collectively, the revised statutes addressed crimes that in recent years have accounted for over 97% of all convictions. Equally as important, the revised statutes addressed a wide range of definitions, defenses, and penalties and sentencing provisions.

Subsequent to the issuance of the recommendations on March 31, 2021, the CCRC has engaged in a number of activities aimed at further advancing public and legislative consideration of the recommendations. This includes development of the RCCA bill in consultation with the Council's Office of General Counsel during the second half of FY21, hosting an online public symposium on the March 31, 2021 recommendations, providing extensive testimony on the RCCA at Council hearings in 1Q of FY22, and providing the Council with technical assistance during FY22 to ensure drafting accuracy and answer questions about the RCCA and any subsequent amendments.

49. Please describe any changes made to the CCRC's operations since the submission of the agency's criminal code reform recommendations.

Since the CCRC's submission of its March 31, 2021 reform recommendations there have been several operational changes. First, since April 2021, two of the agency's five (total) staff have been detailed to the Council Committee on the Judiciary and Public Safety for the purposes of providing subject matter expertise, including legislative drafting and legal guidance, on legislation to codify the CCRC recommendations for code reform. The two attorneys on detail were the only two attorneys on staff besides the Executive Director. Second, in April 2021 the agency filled a vacancy for a senior attorney advisor by hiring a person with deep practice experience in District criminal law. The combination of these staffing changes, affecting all but the Executive Director and the agency's social scientist, have required different training, assignment of administrative duties, and workflow.

- 50. The Fiscal Year 2021 Budget Support Act of 2020 (D.C. Law 23-149; 67 DCR 14601) made the CCRC a permanent agency and expanded its mandate to include providing “a legal or policy analysis of proposed legislation or best practices concerning criminal offenses, procedures, or reforms, including information on existing District law, the laws of other jurisdictions, and model legislation.” What legal or policy analyses has the agency conducted under that authority in FY21 or FY22, to date?**

The agency has not received any Council requests per the agency’s new mandate in D.C. Code § 3–152(d), but on its own has worked to meet the mandate in three main ways in FY21 and FY22, to date.

First, the agency has devoted considerable resources to the creation of a bill (the RCCA) to codify the CCRC’s March 31, 2021 recommendations. That work proceeded during the second half of FY21, and was done in consultation with the Council’s Office of General Counsel. Also, in FY22 the CCRC continues to provide technical assistance to the Council on summarizing and the drafting of further changes and corrections to the RCCA.

Second, the agency has continued to develop reform recommendations for other criminal statutes in the D.C. Code that have not been revised to-date and are not the subject of pending legislative initiatives. Drafts reforms recommendations for several such statutes (e.g., obstruction of justice) were issued by the CCRC for public comment on October 5, 2021. As further described below (see response to questions #53), by the end of FY22 the agency plans to issue reports with supplemental recommendations for several criminal code reforms (covering additional offenses beyond those in the RCCA).

Third, the CCRC continually reviews new criminal legislation before the Council and provides testimony where the agency’s expertise appears most relevant. The CCRC provided oral and written testimony on the RCCA in FY22, as well as other criminal legislation in FY21 and FY22. See response to question #52, below.

- 51. Please discuss the work of the Code Revision Advisory Group, including the number of meetings that have occurred in FY21 and FY22, to date.**

On March 31, 2021 (half-way through FY21) the CCRC issued its code reform recommendations per D.C. Code § 3–152. At that time the statutorily-designated Advisory Group, which was directed to assist with the development of those recommendations, also ceased to exist as a formal unit.

However, prior to March 31, 2021 the Advisory Group engaged in intense review of the CCRC’s draft recommendations. In that six-month time period the Advisory Group received and reviewed over 2000 pages of updated legal research, statistical information, and draft statutory text—some new, other parts containing updates compared to prior drafts. Per the CCRC’s procedures and the requirements of its statute, the Advisory Group had at least one month to provide written comments on each draft report containing possible criminal code reform recommendations. Three Advisory Group members—the representatives of the District of Columbia Attorney General, the United States Attorney

for the District of Columbia, and the District of Columbia Public Defender Service—gave 115 pages of written comments to the agency during this time period. (No other written comments were received, though three other members gave oral comments in this timeframe.) The CCRC in turn provided detailed written responses to all these written comments. The record of these comments and responses was transmitted to the Council and Mayor in the background materials to the agency’s March 31, 2021 recommendations and remains publicly available on the agency’s website.

On March 24, 2021 the five voting members of the CCRC’s Advisory Group voted unanimously, 5-0, to approve the CCRC’s submission of the agency’s recommendations (and supporting materials) to the Council and Mayor. Through transmission of the CCRC recommendations on March 31, 2021 the Advisory Group workload was heavy and the material complex. In FY21 the CCRC Advisory Group held seven virtual (online) meetings prior to completion of its work. The meetings followed the District’s Open Meeting Act Requirements. No meetings were held in the remainder of FY21 or FY22 after disbandment of the Advisory Group on March 31, 2021.

The CCRC is deeply grateful for the work of all the Advisory Group members and their institutions over their many years of service. In particular, the two Council appointees to the Advisory Group—Professors Don Braman and Paul Butler—gave significant time to the reform efforts and are not compensated, either directly or indirectly through their employment, for their time.

a. How has the agency engaged with the Code Revision Advisory Group since the submission of the agency’s criminal code reform recommendations?

Since the formal end of the Advisory Group’s work on March 31, 2021, the CCRC has invited past Advisory Group members to continue providing written and oral comments on new draft reform recommendations on an informal basis. Since March 31, 2021 the agency has posted its new draft statutory language, commentary, and background information to the agency’s website for any member of the public or organization to provide comments, but has specifically emailed former Advisory Group members to solicit written comments.

Under this new approach former Advisory Group members, the agency has so far received oral or written comments from representatives of the District of Columbia Attorney General, the United States Attorney for the District of Columbia, and the District of Columbia Public Defender Service. As per prior practice, the CCRC has reviewed these comments and based its updated drafts or final recommendations based on the comments. All written comments and CCRC responses are posted on the agency’s website.

52. Please list any Council hearings at which CCRC offered testimony in FY21 or FY22.

In addition to agency oversight hearings, the CCRC has provided the following testimony at Council hearings in FY20 or FY21 to-date:

- Oral and Written Testimony for the December 16, 2021 Hearing on B24-0416 the Revised Criminal Code Act of 2021
- Oral and Written Testimony for the November 4, 2021 Hearing on B24-0416, the “Revised Criminal Code Act of 2021” (RCCA)
- Oral and Written Testimony for the October 7, 2021 Hearing on B24-0338, The “Redefinition of Child Amendment Act of 2021”
- Oral and Written Testimony for the October 15, 2020 Hearing on B23-0723, the “Rioting Modernization Amendment Act of 2020” and B23-0882, the “Comprehensive Policing and Justice Reform Amendment Act of 2020”;

53. Please list any reports or analyses that the CCRC plans to release in the remainder of FY22.

In the remainder of FY 21 the CCRC plans to issue the following reports or analyses:

- Date TBD (by March 31, 2022) – CCRC 2021 Annual Report;
- Dates TBD - Supplementary Final Recommendations for Criminal Code Reform addressing statutes not part of the March 31, 2021 package or the RCCA, including:
 - Terrorism;
 - Obstruction of Justice;
 - Bigamy;
 - Perjury
 - Bribery
 - Public Corruption
 - Gambling
 - Sex Offender Registry Violations
- Date TBD – Statistical Analysis of Superior Court 2021 charging and sentencing data.

54. Please provide an update on any issues related to maintaining the CCRC’s office space in 441 4th Street, NW.

The CCRC occupies one room in the basement level of the District office building at 441 4th St. NW. The location was previously used by contractors to the D.C. Sentencing and Criminal Code Reform Commission and reassigned to the CCRC by DGS at the start of its operation on October 1, 2016.

The CCRC does not have an MOU controlling its use of the space and does not reimburse DGS for use of the space. It is unclear whether the agency’s continued use of the space is feasible if its operation be extended beyond FY22.

It should also be noted that the current lack of a second room or individual offices poses operational difficulties in a variety of ways—e.g., all meetings of the agency’s Advisory Group, sensitive HR conversations, and needs for employee privacy (including breastfeeding) require relocation out of the agency’s offices. In the past, the CCRC has relied upon the Citywide Conferencing Center and other building rooms for additional space, as needed.

Notably, teleworking during the public health emergency has been quite successful and the agency continues to use teleworking to the maximum extent allowable.

Given the nature of the agency's work and small size, a single office or a couple of desks in shared space and access to meeting rooms in the Wilson building may be optimal for the future.

District of Columbia Criminal Code Reform Commission (MA0)

FY 2022 Schedule A as of January 25, 2022

Posn Stat	Position#	Title	Name	Emplid	Hire Date	Vac Stat	Grade	Step	Salary	Fringe Benefits	FTE x Dist %	Pay	Barg	Union	geted Posi	Appr Year	Agency	Index	PCA	Fund	Program	Activity	F/P Time	Reg/Temp/Term	Sal Plan	Head Count	FTE	Dist %
A	00001748	Sr. Attorney Advisor	Scanlon, Anna B	00116988	4/26/21	F	8	0	116,076	23,680	1	XS	CH11	XAA	Y	22	MA0	10100	10110	0100	1001	1010	F	Reg	XS0001	1	1	100
A	00047268	Executive Director	Schmechel, Richard S	00070829	11/5/12	F	9	0	144,106	29,398	1	XS	CH11	XAA	Y	22	MA0	10100	10110	0100	1001	1010	F	Reg	XS0001	1	1	100
A	00075456	Sr. Attorney Advisor	Park, Jinwoo	00078108	9/9/13	F	8	0	116,183	23,701	1	XS	CH11	XAA	Y	22	MA0	10100	10110	0100	1001	1010	F	Reg	XS0001	1	1	100
A	00075457	Social Scientist	Bronshteyn, Margarita A	00115564	10/13/20	F	6	0	86,550	17,656	1	XS	CH11	XAA	Y	22	MA0	10100	10110	0100	1001	1010	F	Reg	XS0001	1	1	100
A	00075475	Sr. Attorney Advisor	Redfern, Rachel S	00071309	1/14/13	F	8	0	116,914	23,851	1	XS	CH11	XAA	Y	22	MA0	10100	10110	0100	1001	1010	F	Reg	XS0001	1	1	100

CCRC 2021 Performance Oversight Responses

Appendix B

(CCRC Advisory Group Agendas and Minutes FY21)



D.C. Criminal Code Reform Commission
441 Fourth Street, NW, Suite 1C001S, Washington, D.C. 20001
(202) 442-8715 www.ccrdc.dc.gov

**D.C. CRIMINAL CODE REFORM COMMISSION
NOTICE OF PUBLIC MEETING
WEDNESDAY, OCTOBER 7, 2020 AT 10:00 AM
TELEPHONIC MEETING**

The D.C. Criminal Code Reform Commission (CCRC) will hold a meeting of its Criminal Code Revision Advisory Group (Advisory Group) on Wednesday, October 7, 2020 at 10am. The meeting will be telephonic and members of the public may hear the meeting by calling:

Dial-in number: 1-650-479-3208

Event number / Access code: 172 159 9924.

The planned meeting agenda is below. Any changes to the meeting agenda will be posted on the agency's website, <http://ccrc.dc.gov/page/ccrc-meetings>. For further information, contact Richard Schmechel, Executive Director, at (202) 442-8715 or ccrc@dc.gov.

MEETING AGENDA

- I. Welcome and Announcements.
- II. Discussion of Advisory Group Draft Reports Under Current Review:
 - (A) First Draft of Report #63 – Misrepresentation as a District of Columbia Entity;
 - (B) First Draft of Report #64 – Allowing Dogs To Go At Large;
 - (C) First Draft of Report #65 – Contributing to the Delinquency of a Minor;
 - (D) First Draft of Report #66 – Defense of Self, Others, or Property; and
 - (E) First Draft of Report #67 – Entrapment, Duress, and Mental Disease or Defect Defenses.
- III. Adjournment.

This meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this meeting to the Office of Open Government at opengovoffice@dc.gov.



D.C. Criminal Code Reform Commission

441 Fourth Street, NW, Suite 1C001S, Washington, DC 20001

(202) 442-8715 www.ccrdc.dc.gov

MINUTES OF PUBLIC MEETING WEDNESDAY, OCTOBER 7, 2020, at 10:00 AM

On Wednesday, October 7, 2020, at 10:00 am, the D.C. Criminal Code Reform Commission (CCRC) held a meeting of its Criminal Code Reform Advisory Group (Advisory Group). The meeting was held telephonically at (650) 479-3208 (access code: 172 159 9924.). The meeting minutes are below. For further information, contact Richard Schmechel, Executive Director, at (202) 442-8715 or richard.schmechel@dc.gov.

Commission Staff in Attendance:

Richard Schmechel (Executive Director)

Rachel Redfern (Senior Attorney Advisor)

Jinwoo Park (Senior Attorney Advisor)

Patrice Sulton (Senior Attorney Advisor)

Advisory Group Members and Guests in Attendance:

Laura Hankins (Designee of the Director of the Public Defender Service for the District of Columbia)

Kevin Whitfield (Representative of the D.C. Council Committee on the Judiciary and Public Safety)

Katerina Semyonova (Visiting Attendee of the Public Defender Service for the District of Columbia)

Dave Rosenthal (Designee of the Attorney General of the District of Columbia)

Elana Suttenger (Visiting Attendee of the United States Attorney's Office for the District Columbia)

Seema Gajwani (Visiting Attendee of the Office of the Attorney General of the District of Columbia)

Don Braman (Council appointee)

Paul Butler (Council appointee)

I. Welcome and Announcements.

- a. The deadline for written comments on outstanding draft reports is November 9.
- b. The Executive Director noted the CCRC is continuing to work on a comprehensive update to all recommendations that will address the comments we have received. We hope to issue that update in December.

- c. Tomorrow, the Executive Director will send out an updated compilation of revised statutes to correct an error in the September 28th version (which omitted the definition of “deadly force”).

II. The group discussed the First Draft of Report #63, Misrepresentation as a District of Columbia Entity.

- a. OAG asked whether the language “with intent to receive a personal or business benefit of any kind” includes benefits conferred to another person.
 - i. The Executive Director said that the phrase in question was to be construed broadly.
- b. PDS asked about the meaning of the phrase “lawful authority” and offered a hypothetical in which someone uses their personal initials “D.C.”
 - i. The Executive Director confirmed that the language is intended to include only authority as a District of Columbia representative and agreed that the drafting could be improved to clarify the link between the intent to deceive and the lawful authority.
- c. OAG asked about misrepresentations that include emblems but do not include “D.C.,” such as fake badges that say, “Metropolitan Police Department.”
 - i. The Executive Director explained that neither the current statute nor the revised statute will reach that conduct, however, there may be fraud liability.

III. The group discussed the First Draft of Report #64, Allowing Dogs To Go At Large.

- a. OAG stated that according to its records there have only been 12 arrests in 10 years and only one that went to trial. He said that seems to support that the provision is unnecessary and reliance on the DCMR provision may be sufficient.
- b. OAG noted that D.C. Code § 22-1311 also includes authority for the pound master to euthanize a dangerous animal and asked whether that is covered in the DCMR provision or needs to be kept.
 - i. The Executive Director stated that he believed, but CCRC will double-check, that the DCMR provisions or D.C. Code title 8 chapter 19 provide overlapping authority for destruction of a dangerous animal .

IV. The group discussed the First Draft of Report #65, Contributing to the Delinquency of a Minor.

- a. PDS asked about chronic truancy provision and when it would apply.
 - i. The Executive Director explained that the culpable mental state in the revised statute requires more awareness about the chronic nature of the truancy than the current statute.
 - ii. CCRC staff clarified that the language is not intended to include conduct that precedes the 10th day of truancy.
- b. USAO asked about the meaning of “act of civil disobedience.”

- i. The Executive Director said that the term is undefined in the RCC as it is in the current D.C. Code, but would appear to clearly include political speech.
- c. PDS asked whether religious objections to compulsory education are included.
 - i. CCRC staff noted that a parental discipline defense may apply, and that the definition of “chronic truancy” requires the lack of a legitimate excuse.
 - ii. OAG noted that there are provisions for home schooling under D.C. attendance laws.
- d. USAO asked whether civil disobedience includes conduct that also constitutes a crime, and why civil disobedience should be an exception only to this crime and not others.
 - i. PDS noted that many acts of civil disobedience are criminal and gave the example of a sit in at a segregated lunch counter or the mayor’s office (political speech).
 - ii. The Executive Director explained that the exception applies only to the contributing to delinquency offense and not to the other criminal charge.
- e. Professor Butler stated that this crime should not exist because it addresses a problem that is better addressed outside the criminal justice system. Women are more likely to be charged with this offense than men. There is no evidence that this kind of criminalization is an effective way of keeping kids in school.
- f. PDS asked why the offense shouldn’t merge with revised abuse and neglect statutes.
 - i. The Executive Director noted that the RCC abuse and neglect statutes, unlike other crimes like assault, require a duty of responsibility between the actor and the complainant and are penalized higher than comparable conduct by an actor who has no such duty to the complainant. In that sense, the abuse and neglect statutes do already take into account the special duty of care. He said that CCRC will examine merger as to those offenses further.
- g. USAO asked whether a person can contribute to the delinquency of a minor under 14 years of age, and relatedly, whether a person can contribute to delinquency even if the minor *cannot* be charged.
 - i. The Executive Director explained that the developmental maturity defense, which applies categorically to children under 12, is not a jurisdiction provision. While there may be a complete defense, the conduct of an under 12 person still facially may meet the elements of an offense. The revised statute subsection (d) also specifically also states that an actor may be prosecuted even though the minor has not been subjected to delinquency proceedings. The CCRC will review commentary to make sure it sufficiently notes person can be convicted of contributing to delinquency even if the minor is not charged under the developmental incapacity defense.

V. The group did not have any comments at this time on the First Draft of Report #66, Defense of Self, Others, or Property or on the First Draft of Report #67, Entrapment, Duress, and Mental Disease or Defect Defenses.

VI. Adjournment.

- a. There being no further questions or comments the meeting was adjourned at 11:02 a.m.
- b. The next meeting will be held on November 4, 2020, at 10:00 a.m. The CCRC welcomes any individual questions in the interim.



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(202) 442-8715 www.ccrc.dc.gov

**D.C. CRIMINAL CODE REFORM COMMISSION
NOTICE OF PUBLIC MEETING
WEDNESDAY, NOVEMBER 4, 2020 AT 10:00 AM
TELEPHONIC MEETING**

The D.C. Criminal Code Reform Commission (CCRC) will hold a meeting of its Criminal Code Revision Advisory Group (Advisory Group) on Wednesday, November 4, 2020 at 10am. The meeting will be telephonic and members of the public may hear the meeting by calling:

Dial-in number: 1-650-479-3208

Event number / Access code: 172 181 6573.

The planned meeting agenda is below. Any changes to the meeting agenda will be posted on the agency's website, <http://ccrc.dc.gov/page/ccrc-meetings>. For further information, contact Richard Schmechel, Executive Director, at (202) 442-8715 or ccrc@dc.gov.

MEETING AGENDA

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 - (E) First Draft of Report #67 – Entrapment, Duress, and Mental Disease or Defect Defenses.
- III. Adjournment.

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D.C. Criminal Code Reform Commission

441 Fourth Street, NW, Suite 1C001S, Washington, DC 20001

(202) 442-8715 www.ccrc.dc.gov

MINUTES OF PUBLIC MEETING WEDNESDAY, NOVEMBER 4, 2020, at 10:00 AM

On Wednesday, November 4, 2020, at 10:00 am, the D.C. Criminal Code Reform Commission (CCRC) held a meeting of its Criminal Code Reform Advisory Group (Advisory Group). The meeting was held telephonically at (650) 479-3208 (access code: 172 181 6573). The meeting minutes are below. For further information, contact Richard Schmechel, Executive Director, at (202) 442-8715 or richard.schmechel@dc.gov.

Commission Staff in Attendance:

Richard Schmechel (Executive Director)

Rachel Redfern (Senior Attorney Advisor)

Jinwoo Park (Senior Attorney Advisor)

Patrice Sulton (Senior Attorney Advisor)

Margarita Bronshteyn (Social Scientist)

Advisory Group Members and Guests in Attendance:

Laura Hankins (Designee of the Director of the Public Defender Service for the District of Columbia)

Don Braman (Council appointee)

Dave Rosenthal (Designee of the Attorney General of the District of Columbia)

Katerina Semyonova (Visiting Attendee of the Public Defender Service for the District of Columbia)

Seema Gajwani (Visiting Attendee of the Office of the Attorney General of the District of Columbia)

Elana Suttenger (Designee of the Acting United States Attorney's Office for the District Columbia)

I. Welcome and Announcements.

- a. Elana Suttenger has been appointed the designee to the Advisory Group by the Acting U.S. Attorney for the District of Columbia. The CCRC thanks former designee Renata Kendrick Cooper for her years of work with the agency and formally welcomes Elana Suttenger.
- b. The Executive Director introduced Margarita Bronshteyn, who recently joined CCRC as a social scientist.

- c. The Executive Director noted that the deadline for written comments on outstanding draft reports is November 9.
- d. The Executive Director noted the CCRC is continuing to work on a comprehensive update to all recommendations that will address the comments we have received. The agency expects to issue that update in December.
- e. The next Advisory Group meeting is December 2, 2020, at 10:00a.m.

II. The group discussed the First Draft of Report #65, Contributing to the Delinquency of a Minor.

- a. OAG said further clarification about criminal liability for providing alcohol to a minor may be necessary. A child's possession or consumption of alcohol may not be construed as a criminal offense (D.C. Code § 25-1002).
 - i. The Executive Director said that, although the current statute's characterization isn't entirely clear the commentary notes the CCRC position that D.C. Code § 25-1002 establishes an offense but limits the prosecutorial jurisdiction for bringing a charge against persons under 21. He said that staff would reevaluate the drafting but welcomed Advisory Group comments.
 - ii. USAO noted that the drafting solution used here, whatever it may be, might also apply to the Developmental Incapacity Defense, a point that USAO previously raised as needing clarification. USAO did not offer specific draft language at the time.

III. The group did not have any comments at this time on the First Draft of Report #63, Misrepresentation as a District of Columbia Entity; the First Draft of Report #64, Allowing Dogs To Go At Large; the First Draft of Report #66, Defense of Self, Others, or Property; or the First Draft of Report #67, Entrapment, Duress, and Mental Disease or Defect Defenses.

IV. Adjournment.

- a. There being no more questions or concerns raised by the Advisory Group, the meeting was adjourned at 10:35a.m.



D.C. Criminal Code Reform Commission
441 Fourth Street, NW, Suite 1C001S, Washington, D.C. 20001
(202) 442-8715 www.ccrdc.dc.gov

**D.C. CRIMINAL CODE REFORM COMMISSION
NOTICE OF PUBLIC MEETING
WEDNESDAY, DECEMBER 2, 2020 AT 10:00 AM
TELEPHONIC MEETING**

The D.C. Criminal Code Reform Commission (CCRC) will hold a meeting of its Criminal Code Revision Advisory Group (Advisory Group) on Wednesday, December 2, 2020 at 10am. The meeting will be telephonic and members of the public may hear the meeting by calling:

Dial-in number: 1-650-479-3208

Event number / Access code: 172 775 9767.

The planned meeting agenda is below. Any changes to the meeting agenda will be posted on the agency's website, <http://ccrc.dc.gov/page/ccrc-meetings>. For further information, contact Richard Schmechel, Executive Director, at (202) 442-8715 or ccrc@dc.gov.

MEETING AGENDA

- I. Welcome and Announcements.
- II. Discussion of Advisory Group Written Comments on:
 - (A) First Draft of Report #63 – Misrepresentation as a District of Columbia Entity;
 - (B) First Draft of Report #64 – Allowing Dogs To Go At Large;
 - (C) First Draft of Report #65 – Contributing to the Delinquency of a Minor;
 - (D) First Draft of Report #66 – Defense of Self, Others, or Property; and
 - (E) First Draft of Report #67 – Entrapment, Duress, and Mental Disease or Defect Defenses.
- III. Discussion of Timing and Framing of the March 2021 Advisory Group Vote to Issue Recommendations to the Council and Mayor
- IV. Adjournment.

This meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this meeting to the Office of Open Government at opengovoffice@dc.gov.



D.C. Criminal Code Reform Commission

441 Fourth Street, NW, Suite 1C001S, Washington, DC 20001

(202) 442-8715 www.ccrdc.dc.gov

MINUTES OF PUBLIC MEETING WEDNESDAY, DECEMBER 2, 2020, at 10:00 AM

On Wednesday, December 2, 2020, at 10:00 am, the D.C. Criminal Code Reform Commission (CCRC) held a meeting of its Criminal Code Reform Advisory Group (Advisory Group). The meeting was held telephonically at (650) 479-3208 (access code: 172 775 9767). The meeting minutes are below. For further information, contact Richard Schmechel, Executive Director, at (202) 442-8715 or ccrc@dc.gov.

Commission Staff in Attendance:

Richard Schmechel (Executive Director)

Rachel Redfern (Senior Attorney Advisor)

Jinwoo Park (Senior Attorney Advisor)

Patrice Sulton (Senior Attorney Advisor)

Margarita Bronshteyn (Social Scientist)

Advisory Group Members and Guests in Attendance:

Laura Hankins (Designee of the Director of the Public Defender Service for the District of Columbia)

Kevin Whitfield (Representative of the D.C. Council Committee on the Judiciary and Public Safety)

Katerina Semyonova (Visiting Attendee of the Public Defender Service for the District of Columbia)

Dave Rosenthal (Designee of the Attorney General of the District of Columbia)

Elana Suttenger (Designee of the Acting United States Attorney's Office for the District Columbia)

Seema Gajwani (Visiting Attendee of the Office of the Attorney General of the District of Columbia)

Don Braman (Council appointee)

Nishant Keerikkatte (Visiting Attendee of the Office of the Deputy Mayor for Public Safety and Justice)

*Note: Paul Butler (Council appointee) was unable to connect due to technical issues

I. Welcome and Announcements.

- a. The Executive Director said that the agency expects to release a cumulative update at the end of December. It will include an appendix addressing each of the written

comments received since the last cumulative update and a red-inked version of the compiled statutes showing changes since the last draft.

II. Discussion of Advisory Group Written Comments on First Drafts of Reports #63-67

- a. There were no further questions or discussion by the Advisory Group.

III. Discussion of Timing and Framing of the March 2021 Advisory Group Vote to Issue Recommendations to the Council and Mayor.

- a. The Executive Director said that written comments on the update issued in December will be due in late January. The CCRC plans to respond to comments and issue the final recommendations in late February or early March.
- b. The Executive Director explained that the agency expects to hold a single vote on the statutory language and commentary. The record that is sent to the Council by March 31, 2021 will include written commentary from Advisory Group members, CCRC's responses, and court statistics.
- c. In anticipation of a vote, the CCRC asks that Advisory Group members hold open three mornings in March, including March 24, 2021. The Executive Director will send an email about scheduling to ensure all voting members are able to participate.
- d. The CCRC aims to deliver this package with as much support as possible. The CCRC welcomes input from Advisory Group members on topline priorities and concerns.

IV. Adjournment.

- a. The Executive Director said that the next Advisory Group meeting is January 6, 2021, at 10:00a.m.
- b. There being no more questions or concerns raised by the Advisory Group, the meeting was adjourned at 10:25 a.m.



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**D.C. CRIMINAL CODE REFORM COMMISSION
NOTICE OF PUBLIC MEETING
WEDNESDAY, JANUARY 6, 2021 AT 10:00 AM
TELEPHONIC MEETING**

The D.C. Criminal Code Reform Commission (CCRC) will hold a meeting of its Criminal Code Revision Advisory Group (Advisory Group) on Wednesday, January 6, 2021 at 10am. The meeting will be telephonic and members of the public may hear the meeting by calling:

Dial-in number: 1-650-479-3208

Event number / Access code: 180 216 5030.

The planned meeting agenda is below. Any changes to the meeting agenda will be posted on the agency's website, <http://ccrc.dc.gov/page/ccrc-meetings>. For further information, contact Richard Schmechel, Executive Director, at ccrc@dc.gov.

MEETING AGENDA

- I. Welcome and Announcements.
- II. Discussion of Draft Reports and Memoranda Under Advisory Group Review:
 - (A) First Draft of Report #67 – December 2020 RCC Cumulative Update.
 - (B) Advisory Group Memorandum #39 - Supplemental Materials to the First Draft of Report #67.
 - (C) Fourth Draft of Report #41 – Ordinal Ranking of Maximum Imprisonment Penalties.
 - (D) Advisory Group Memorandum #40 - Statistics on District Adult Criminal Charges and Convictions.
- III. Adjournment.

This meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this meeting to the Office of Open Government at opengovoffice@dc.gov.



D.C. Criminal Code Reform Commission

441 Fourth Street, NW, Suite 1C001S, Washington, DC 20001

(202) 442-8715 www.ccrdc.dc.gov

MINUTES OF PUBLIC MEETING WEDNESDAY, JANUARY 6, 2021, at 10:00 AM

On Wednesday, January 6, 2021, at 10:00 am, the D.C. Criminal Code Reform Commission (CCRC) held a meeting of its Criminal Code Reform Advisory Group (Advisory Group). The meeting was held telephonically at (650) 479-3208 (access code: 180 216 5030). The meeting minutes are below. For further information, contact Richard Schmechel, Executive Director, at (202) 442-8715 or ccrc@dc.gov.

Commission Staff in Attendance:

Richard Schmechel (Executive Director)

Rachel Redfern (Senior Attorney Advisor)

Jinwoo Park (Senior Attorney Advisor)

Margarita Bronshteyn (Social Scientist)

Advisory Group Members and Guests in Attendance:

Laura Hankins (Designee of the Director of the Public Defender Service for the District of Columbia)

Kevin Whitfield (Representative of the D.C. Council Committee on the Judiciary and Public Safety)

Katerina Semyonova (Visiting Attendee of the Public Defender Service for the District of Columbia)

Dave Rosenthal (Designee of the Attorney General of the District of Columbia)

Elana Suttentberg (Designee of the Acting United States Attorney's Office for the District Columbia)

Seema Gajwani (Visiting Attendee of the Office of the Attorney General of the District of Columbia)

Don Braman (Council appointee)

Nishant Keerikkatte (Visiting Attendee of the Office of the Deputy Mayor for Public Safety and Justice)

Paul Butler (Council appointee)

I. Welcome and Announcements.

- a. The Executive Director recognized the departure of Patrice Sulton from agency staff. The Executive Director thanked Ms. Sulton for all her contributions to the agency and work on the revised criminal code (RCC).

- b. The Executive Director gave an overview of the scope of Advisory Group Memo #40, Statistics on District Adult Criminal Charges and Convictions, issued December 31, 2020, which contains updated court statistics. Due to time constraints, the Executive Director was unable to add discussion of Memo #40 to this month's agenda, but will do so for February's meeting. The Executive Director made three points regarding Memo #40:
 - i. First, the years covered in the data in Memo #40—2010-2019—are the same years that were covered in prior Memo #38, issued July 31, 2020. The Executive Director noted that Memo #40 contains an additional sheet for 2009 data, although that data has been more difficult to clean.
 - ii. Second, the Executive Director stated that the organization of the data in Memo #40 is the same as the organization of the data in Memo #38 with one difference. Memo #38 limited data analysis to the first in time sentence. Memo #40, however, includes two additional sentences: 1) 72 hours after the initial sentence (chosen because it seems to be the end of the period of time for the court's quality assurance process); and 2) the last recorded entry to account for appeals and other changes to sentences. The Executive Director stated that there are some minor differences in analyses of court data in Memo #40 as compared to Memo #38, but they are negligible in the overall picture.
 - iii. Third, the Executive Director stated that the cumulative update to the RCC, Report #68 issued December 24, 2020, did not include penalty recommendations—RCC § 22E-603, Authorized Terms of Imprisonment, and the ordinal ranking of offenses spreadsheet. The Executive Director intends to issue those documents at the end of next week, with a month for the Advisory Group to issue written recommendations.
- c. The Executive Director discussed the timing and framing of the coming months prior to the Advisory Group vote to issue recommendations to the Council and Mayor.
 - i. The Executive Director stated that by statute, the Advisory Group has a month to submit written comments on "draft" recommendations and that the agency's "final" recommendations must be based on such comments that are timely received. The agency's statutory deadline to deliver final recommendations to the Council and the Mayor is March 31, 2021. The Executive Director stated that, per prior discussion, the Advisory Group will have a special meeting on March 24, 2021, for a vote on the agency's final recommendations.
 - ii. Given these statutory requirements, the Executive Director stated that between now and the Advisory Group Vote on March 24, 2021:
 - 1. On or by January 15, 2021, the agency will issue a report with updated RCC § 22E-603, Authorized Terms of Imprisonment, and updated classifications for specific RCC offenses.

2. Advisory Group written comments on Report #68, Cumulative Update to the Revised Criminal Code, are due on January 29, 2021.
 3. The February 3, 2021, Advisory Group meeting will discuss questions on the updated penalty recommendations as well as written comments received on Report #68 (and the statistical analysis in Memo #40).
 4. On or around February 15, 2021 will be the due date for Advisory Group written comments on the updated penalty recommendations.
 5. Staff will issue final recommendations on or by March 10, 2021, two weeks before the scheduled vote.
- iii. The representative from the Attorney General of the District of Columbia (OAG) stated that, due to the national elections and presidential inauguration, the compressed time schedule was particularly difficult, although OAG would meet the required deadlines.
 - iv. The Executive Director acknowledged the large scope of the work and suggested that to maximize the time for review and written comment, the Advisory Group not re-raise concerns in its written comments that have already been addressed. The Executive Director noted that Appendix D2 that accompanied the First Draft of Report #68 highlights and explains all the changes made to the RCC in this cumulative update.
 - v. The representative from the United States Attorney's Office for the District of Columbia (USAO) asked whether, in the next cumulative update, there would be new substantive recommendations. The Executive Director stated that the CCRC wasn't planning to issue additional reports on new topics before the March vote, but that there would be substantive changes to RCC recommendations in the updated penalty recommendations being issued next week, responses to any Advisory Group written comments on the updated penalty recommendations and Report #68, and possibly CCRC-initiated substantive changes to already existing material.

II. Discussion of First Draft of Report #68, Cumulative Update to the Revised Criminal Code

- a. The Executive Director highlighted two items in Advisory Group Memo #39, Supplemental Materials to the First Draft of Report #68, issued December 24, 2020.
 - i. First, as is discussed in the memo, there are two District of Columbia Court of Appeals cases that the agency needs to examine and that may require changes to the RCC—*Fleming v. United States*, 224 A.3d 213, 227 (D.C. 2020), cert. denied, 207 L. Ed. 2d 1059 (2020), pertaining to causation, and *Lucas v. United States*, 240 A.3d 328 (D.C. 2020), pertaining to the current D.C. Code bias enhancement. Agency staff would appreciate any Advisory Group comments on these two cases, particularly *Fleming*.

- ii. Second, as is discussed in the memo and accompanying materials, the RCC no longer has a general effective consent defense in the general part that pertains to certain offenses against persons. Instead, specific offenses have an effective consent defense that is tailored to that particular offense.
- b. The Executive Director asked if the Advisory Group had any questions about or difficulty navigating the materials that comprise Report #68.
 - i. The representative from USAO asked what it meant that RCC § 22E-1203, previously the menacing offense, was now marked as “Reserved.” The Executive Director stated that the previous RCC menacing offense is now wrapped into the RCC threats offense (RCC § 22E-1204) and that Appendix D2 explains this change. The Executive Director stated that “Reserved” is a temporary placeholder for RCC § 22E-1203 and ultimately the offenses in Chapter 12 of the RCC would have to be renumbered if menacing remains part of the threats offense. More generally, the Executive Director stated that “Reserved” is generally such a placeholder in the RCC pending final revisions and renumbering.
 - ii. The representative from the Public Defender Service for the District of Columbia (PDS) asked about the RCC definition of “dwelling.” PDS noted that “at the time of the offense” had been struck from the definition and that the definition now required that the structure “is either designed or actually used for lodging or residing overnight.” PDS noted that the Report #68 stated that this revision was intended to make the definition easier to read, but that it might actually be a substantive change that expands the definition to buildings that were designed for lodging or overnight use but haven’t been used so in a long time. The Executive Director stated it was not intended to be a substantive change and that staff would review it further.
 - iii. The representative from USAO noted that “cosmetic” procedures are now included in the effective consent defense that applies to several of the RCC offenses against persons, such as assault, and asked if the commentary discusses how a “cosmetic procedure” differed from a “medical” procedure. The Executive Director stated that he could review the commentary, but “cosmetic” was included due to the current D.C. Code and RCC definitions of “serious bodily injury” including “disfigurement.” The Executive Director noted there was little DCCA case law discussing disfigurement.
 - iv. The representative from USAO noted that “cosmetic” procedures were not included in the effective consent defense that applies to the lower gradations of the RCC assault offense. The Executive Director stated that is correct because for those lower gradations, an adult can consent to the required type of bodily injury without restriction.

- c. The Executive Director asked if there were further questions on Report #68. There were none. The Executive Director asked the Advisory Group to alert him to problems with the documents, such as missing text.
- d. The representative from the Public Defender Service thanked the staff for the work and through that has gone into the project.

III. Adjournment.

- a. The Executive Director said that the next Advisory Group meeting is February 3, 2021, at 10:00 a.m.
- b. There being no more questions or concerns raised by the Advisory Group, the meeting was adjourned at 10:57 a.m.



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**D.C. CRIMINAL CODE REFORM COMMISSION
NOTICE OF PUBLIC MEETING
WEDNESDAY, FEBRUARY 3, 2021 AT 10:00 AM
TELEPHONIC MEETING**

The D.C. Criminal Code Reform Commission (CCRC) will hold a meeting of its Criminal Code Revision Advisory Group (Advisory Group) on Wednesday, February 3, 2021 at 10am. The meeting will be telephonic and members of the public may hear the meeting by calling:

Dial-in number: 1-650-479-3208

Event number / Access code: 180 506 0172.

The planned meeting agenda is below. Any changes to the meeting agenda will be posted on the agency's website, <http://ccrc.dc.gov/page/ccrc-meetings>. For further information, contact Richard Schmechel, Executive Director, at ccrc@dc.gov.

MEETING AGENDA

- I. Welcome and Announcements.
- II. Discussion of Comments Received on Prior Draft Reports:
 - (A) First Draft of Report #68 – December 2020 RCC Cumulative Update.
 - (B) Advisory Group Memorandum #39 - Supplemental Materials to the First Draft of Report #67.
 - (C) Advisory Group Memorandum #40 - Statistics on District Adult Criminal Charges and Convictions.
- III. Discussion of Draft Reports and Memoranda Under Advisory Group Review:
 - (A) First Draft of Report #69 - Cumulative Update to Class Imprisonment Terms and Classification of RCC Offenses.
 - (B) Advisory Group Memorandum #41 - Supplemental Materials to the First Draft of Report #69.
- IV. Adjournment.

This meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this meeting to the Office of Open Government at opengovoffice@dc.gov.



D.C. Criminal Code Reform Commission

441 Fourth Street, NW, Suite 1C001S, Washington, DC 20001

(202) 442-8715 www.ccrdc.dc.gov

MINUTES OF PUBLIC MEETING WEDNESDAY, FEBRUARY 3, 2021, at 10:00 AM

On Wednesday, February 3, at 10:00 am, the D.C. Criminal Code Reform Commission (CCRC) held a meeting of its Criminal Code Reform Advisory Group (Advisory Group). The meeting was held telephonically at (650) 479-3208 (access code: 180 506 0172). The meeting minutes are below. For further information, contact Richard Schmechel, Executive Director, at (202) 442-8715 or ccrc@dc.gov.

Commission Staff in Attendance:

Richard Schmechel (Executive Director)

Rachel Redfern (Senior Attorney Advisor)

Jinwoo Park (Senior Attorney Advisor)

Margarita Bronshteyn (Social Scientist)

Advisory Group Members and Guests in Attendance:

Laura Hankins (Designee of the Director of the Public Defender Service for the District of Columbia)

Don Braman (Council appointee)

Katerina Semyonova (Visiting Attendee of the Public Defender Service for the District of Columbia)

Kevin Whitfield (Representative of the D.C. Council Committee on the Judiciary and Public Safety)

Elana Suttentberg (Designee of the Acting United States Attorney's Office for the District Columbia)

Dave Rosenthal (Designee of the Attorney General of the District of Columbia)

Paul Butler (Council appointee)

Nishant Keerikkatte (Visiting Attendee of the Office of the Deputy Mayor for Public Safety and Justice)

I. Welcome and Announcements.

- a. The Executive Director noted that the CCRC has posted a vacancy announcement for a Senior Attorney Advisor position on the DC Human Resources website.
- b. The Executive Director reminded Advisory Group members that comments on First Draft of Report #69 - Cumulative Update to Class Imprisonment Terms and Classification of RCC Offenses, are due Monday, February 15, 2021.
- c. The Executive Director noted that CCRC staff has begun reviewing the last round of Advisory Group comments to First Draft of Report # 68, and are continuing to make edits accordingly.
- d. The Executive Director noted that Advisory Group Memorandum #40 includes an Appendix G, which does not include new information, but places Superior Court data alongside corresponding RCC offenses and penalty recommendations.
- e. The Executive Director noted that the next Advisory Group meeting is scheduled for March 3, 2021.
 - i. The agenda will include comments received on the First Draft of Report #69 but will also discuss procedural issues pertaining to the March 24 vote on the final package of materials. The Executive Director noted that at present he expects there to be one vote on recommending the package of reforms to the Council and Mayor for consideration and action. All voting members of the Advisory Group may vote to support, oppose, or abstain from the action and a majority approval of voting members is required by statute.
 - ii. The representative from the Office of the Attorney General (OAG) asked how far in advance of the March 24 vote the Advisory Group members will receive the final version. The Executive Director replied that CCRC is planning to provide the final version to the Advisory Group on or by March 10, 2021.
 - iii. The Executive Director noted that this final version will include a red-ink version of the statutes, as well as responses to Advisory Group member comments.

II. The Advisory Group discussed First Draft of Report #68 – December 2020 RCC Cumulative Update.

- a. The Executive Director noted that CCRC staff has reviewed Advisory Group comments, and currently does not have any questions for the group pertaining to any of the comments.
- b. The representative from the United States Attorney's Office stated that it agreed with changing the effective consent defense for sexual assault to a defense instead of an affirmative defense, in agreement with PDS.
- c. The representative for OAG noted that it also agrees that the effective consent defense for sexual assault should be a defense instead of an affirmative defense.

III. The Advisory Group discussed Advisory Group Memorandum #40 – Statistics on District Adult Criminal Charges and Convictions:

- a. The Executive Director noted that the data provided in this memorandum is based on last in time records as opposed to first in time records, and reflects any quality

control changes that the court has made, as well as changes to sentences due to appellate rulings. The Executive Director stated that the CCRC will rely last-in-time statistics going forward. The Executive Director also stated that these updates to the data were relatively minor.

IV. The Advisory Group Discussed First Draft of Report #69 - Cumulative Update to Class Imprisonment Terms and Classification of RCC Offenses.

- a. The Executive Director noted that the First Draft of Report #69 includes an updated chart which shows the recommended maximum penalty for each RCC offense. The document notes where there are changes to classification of any given offense.
- b. The Executive Director stated that if Advisory Group members disagree with the classification of an offense, it would be helpful for members to recommend a specific alternate classification and provide a rationale for why the offense should be classified differently.
- c. The representative from OAG noted that the commentary for the penalty classification for robbery states that a two class increase applies when use or display of a dangerous weapon directly or indirectly causes bodily injury. However, the draft statutory language does not clearly specify that this causal nexus is required.
 - i. CCRC staff noted it will review the statutory language to ensure it clarifies that there is a causal nexus requirement between the bodily injury and the display or use of a dangerous weapon.

V. Adjournment.

- a. There being no more questions or concerns raised by the Advisory Group on agenda items, the meeting was adjourned at 10:45 a.m.



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**D.C. CRIMINAL CODE REFORM COMMISSION
NOTICE OF PUBLIC MEETING
WEDNESDAY, MARCH 3, 2021 AT 10:00 AM
TELEPHONIC MEETING**

The D.C. Criminal Code Reform Commission (CCRC) will hold a meeting of its Criminal Code Revision Advisory Group (Advisory Group) on Wednesday, March 3, 2021 at 10am. The meeting will be telephonic and members of the public may hear the meeting by calling:

Dial-in number: 1-650-479-3208

Event number / Access code: 180 704 9743.

The planned meeting agenda is below. Any changes to the meeting agenda will be posted on the agency's website, <http://ccrc.dc.gov/page/ccrc-meetings>. For further information, contact Richard Schmechel, Executive Director, at ccrc@dc.gov.

MEETING AGENDA

- I. Welcome and Announcements.
- II. Discussion of Planned March 24, 2021 Advisory Group Vote on the CCRC Final Recommendations
- III. Discussion of Comments Received on Prior Draft Reports:
 - (A) First Draft of Report #69 - Cumulative Update to Class Imprisonment Terms and Classification of RCC Offenses.
 - (B) Advisory Group Memorandum #41 - Supplemental Materials to the First Draft of Report #69.
- IV. Adjournment.

This meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this meeting to the Office of Open Government at opengovoffice@dc.gov.



D.C. Criminal Code Reform Commission

441 Fourth Street, NW, Suite 1C001S, Washington, DC 20001

(202) 442-8715 www.ccrc.dc.gov

MINUTES OF PUBLIC MEETING

WEDNESDAY, MARCH 3, 2021, at 10:00 AM

On Wednesday, March 3, at 10:00 am, the D.C. Criminal Code Reform Commission (CCRC) held a meeting of its Criminal Code Reform Advisory Group (Advisory Group). The meeting was held telephonically at (650) 479-3208 (access code: 180 216 5030). The meeting minutes are below. For further information, contact Richard Schmechel, Executive Director, at (202) 442-8715 or ccrc@dc.gov.

Commission Staff in Attendance:

Richard Schmechel (Executive Director)

Rachel Redfern (Senior Attorney Advisor)

Jinwoo Park (Senior Attorney Advisor)

Margarita Bronshteyn (Social Scientist)

Advisory Group Members and Guests in Attendance:

Laura Hankins (Designee of the Director of the Public Defender Service for the District of Columbia)

Nishant Keerikkatte (Visiting Attendee of the Office of the Deputy Mayor for Public Safety and Justice)

Katerina Semyonova (Visiting Attendee of the Public Defender Service for the District of Columbia)

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Elana Suttenger (Designee of the Acting United States Attorney's Office for the District Columbia)

Seema Gajwani (Visiting Attendee of the Office of the Attorney General of the District of Columbia)

Kevin Whitfield (Representative of the D.C. Council Committee on the Judiciary and Public Safety)

Dave Rosenthal (Designee of the Attorney General of the District of Columbia)

I. Welcome and Announcements.

- a. The Executive Director noted that the CCRC has posted a vacancy announcement and that the vacancy remains open. He solicited any references to potential applicants.
- b. The Executive Director noted that after the scheduled vote on the final recommendations, the formal role of the Advisory Group will end, but hopes that the agencies represented on the Advisory Group will continue to work with the CCRC in future efforts to update and revise the criminal code. He said that he will be in touch via a letter to agencies and individuals in late March or early April about an informal role providing comments in the future.
- c. The Executive Director noted that the CCRC has contracted with the Justice Policy Institute (JPI) to help with communications regarding the reform recommendations, and representatives from JPI may contact Advisory Group members in March or April.

II. The Advisory Group discussed the Planned March 24, 2021 Advisory Group Vote on the CCRC Final Recommendations

- a. The Executive Director provided a summary of the expected voting procedure for the final set of recommendations. The Executive Director stated that there will be a single question up for a vote: “Whether to approve the criminal code reform recommendations and background materials contained in Report #70 and Memorandum #42, subject to any typographical and formatting changes recommended by agency staff, for submission to the Council and Mayor for their due consideration.”
- b. The Executive Director said that Report #70 and Memo #42 are the two documents that will be sent to Advisory Group members on March 10th.
- c. The Executive Director noted that the five voting members can vote for, against, or abstain. Under the agency’s authorizing statute, a majority of the Advisory Group members must vote in favor in order for the recommendations to be submitted to the Council and Mayor. If a majority of the Advisory Group votes to approve, the CCRC will submit the recommendations to the Council and Mayor sometime the following week, on or by March 31. The recommendations will be accompanied with a transmittal memo from the Executive Director that will describe the basic process used to generate the recommendations and background materials, the organization of the documents attached, and thank the Advisory Group members and staff for their service.
- d. The Executive Director noted that if the vote cannot be held on March 24, 2021, there is a backup dates scheduled for March 26, 2021.
- e. The representative from the United States Attorney’s Office asked if the meeting scheduled for March 17, 2021 will still be held. The Executive Director asked Advisory Group members to keep the meeting on their schedules in case there is need for a group discussion as to any issues with respect to Report #70 once the document is sent out March 10. However, he said that he does not expect there to be a need for further meetings besides the March 24, 2021 vote.

III. The Advisory Group discussed the First Draft of Report #69 - Cumulative Update to Class Imprisonment Terms and Classification of RCC Offenses.

- a. The Executive Director noted that the CCRC has received all CRAG comments and is still in the process of reviewing and responding to them.
- b. The representative from the Office of the Attorney General asked if under the proposed *de minimis* defense, whether the objective degree of harm caused is the sole consideration, or if surrounding circumstances may be taken into consideration.
- c. The Executive Director stated that, if he apprehended the question correctly, surrounding circumstances may well be relevant to determining if conduct was *de minimis*. However, the Executive Director noted that the CCRC has been making further revisions to the *de minimis* defense in light of prior comments from OAG and others, and that both the prior and updated versions in the RCC are generally consistent with the considerations specified under the Model Penal Code *de minimis* statute which is followed by multiple states.

IV. The Advisory Group had no questions regarding Advisory Group Memorandum #41 - Supplemental Materials to the First Draft of Report #69.

V. Adjournment.

- a. There being no further questions, the meeting was adjourned at 10:30 a.m.



D.C. Criminal Code Reform Commission
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**D.C. CRIMINAL CODE REFORM COMMISSION
NOTICE OF PUBLIC MEETING
WEDNESDAY, MARCH 24, 2021 AT 10:00 AM
TELEPHONIC MEETING**

The D.C. Criminal Code Reform Commission (CCRC) will hold a meeting of its Criminal Code Revision Advisory Group (Advisory Group) on Wednesday, March 24, 2021 at 10am. The meeting will be telephonic and members of the public may hear the meeting by calling:

Dial-in number: 1-650-479-3208

Event number / Access code: 160 350 6362.

The planned meeting agenda is below. Any changes to the meeting agenda will be posted on the agency's website, <http://ccrc.dc.gov/page/ccrc-meetings>. For further information, contact Richard Schmechel, Executive Director, at ccrc@dc.gov.

MEETING AGENDA

- I. Welcome and Announcements.
- II. Discussion and Vote to Approve for Submission to the Council and Mayor:
 - (A) First Draft of Report #70 - Criminal Code Reform Commission (CCRC)
Recommendations for the Council and Mayor (Voting Draft)
 - (B) Advisory Group Memorandum #42 - Supplemental Materials to the First Draft of Report #70.
- III. Executive Director Closing Remarks
- IV. Adjournment.

This meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this meeting to the Office of Open Government at opengovoffice@dc.gov.



D.C. Criminal Code Reform Commission

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MINUTES OF PUBLIC MEETING

WEDNESDAY, MARCH 24, 2021, at 10:00 AM

On Wednesday, March 24, at 10:00 am, the D.C. Criminal Code Reform Commission (CCRC) held a meeting of its Criminal Code Reform Advisory Group (Advisory Group). The meeting was held telephonically at (650) 479-3208 (access code: 180 216 5030). The meeting minutes are below. For further information, contact Richard Schmechel, Executive Director, at (202) 442-8715 or ccrc@dc.gov.

Commission Staff in Attendance:

Richard Schmechel (Executive Director)

Rachel Redfern (Senior Attorney Advisor)

Jinwoo Park (Senior Attorney Advisor)

Margarita Bronshteyn (Social Scientist)

Advisory Group Members and Guests in Attendance:

Laura Hankins (Designee of the Director of the Public Defender Service for the District of Columbia)

Nishant Keerikkatte (Visiting Attendee of the Office of the Deputy Mayor for Public Safety and Justice)

Katerina Semyonova (Visiting Attendee of the Public Defender Service for the District of Columbia)

Paul Butler (Council Appointee)

Dave Rosenthal (Designee of the Attorney General of the District of Columbia)

Elana Suttenger (Designee of the Acting United States Attorney's Office for the District Columbia)

Kate Mitchell (Visiting Attendee of the Council Committee on the Judiciary and Public Safety)

Kevin Whitfield (Representative of the D.C. Council Committee on the Judiciary and Public Safety)

Don Braman (Council Appointee)

I. Welcome and Announcements.

- a. The Executive Director stated that although the vote to be held at this meeting formally ends the statutory role of the Advisory Group, the Director hopes that members continue to play a role in advising the CCRC in forming additional recommendations and revisions to the criminal code.
- b. The Executive Director noted that the CCRC is planning a public event in June of this year that will highlight the need for code reform and the CCRC's work. As planning for the event continues, the Executive Director will keep the Advisory Group members informed.

II. Discussion and Vote to Approve for Submission to the Council and Mayor:

- a. The Executive Director noted that the CCRC made one technical correction to the voting draft. In February 2020, the CCRC had intended to incorporate a recommendation made by the United States Attorney's office regarding RCC § 22E-214. Under paragraph (b)(2), the words "has been decided" should have been replaced with "has become final." Due to a clerical error the change had not been made to the draft code included in Report #70. The Executive Director noted that, if approved, the final documents transmitted to the Mayor and D.C. Council will include this change.
- b. The Executive Director requested that if any Advisory Group members identify any technical errors prior to transmission to the Council, that they contact the CCRC so changes can be made.
 - i. The representative from the Office of the Attorney General asked when exactly the final version will be transmitted to the Council. The Executive Director said that the CCRC plans to transmit the package sometime between March 29 and March 31.
- b. The Executive Director summarized the voting procedures, noting that votes of "yes," "no," and "abstain" were possible, then asked each of the five voting members of the Advisory Group whether they "approve for submission to the Council and Mayor the submitted criminal code reform recommendations and background materials, subject to any final typographic changes recommended by agency staff."
- c. The five voting members of the Advisory Group voted as follows:
 - i. Donald Braman: **Yes**
 - ii. Paul Butler: **Yes**
 - iii. Laura Hankins (PDS): **Yes**
 - iv. Dave Rosenthal (OAG): **Yes**
 - v. Elana Suttentberg (USAO-DC): **Yes** (stating that the vote was subject to the letter circulated to Advisory Group members just before the meeting)
- d. The Executive Member confirmed that the CCRC recommendations are approved for submission to the Mayor and Council by a unanimous vote of 5-0. The Executive Director stated that the CCRC will transmit the recommendations to the Council and Mayor in electronic form on or by March 31, 2021.
- e. The Executive Director stated that the Advisory Group's statutory duties are fulfilled. The Executive Director thanked the Advisory Group members for their work and assistance, and noted that despite disagreement on specific issues, the

members maintained a civil tone and, in the opinion of the Director, there is broad consensus on most aspects of the revised code. The Executive Director said that the proposed recommendations will improve the clarity, completeness, consistency, and proportionality of the criminal code in the District.

- f. The Executive Director asked if there were any last comments before closing the meeting and formally ending the Advisory Group's statutory duties.
 - i. The PDS Representative thanked the Executive Director for his leadership in this project, and to the CCRC staff for its work.
 - ii. The USAO-DC Representative also thanked the CCRC staff for all its work.
 - iii. Donald Braman congratulated the CCRC and stated that revising a criminal code is an immense project, and the difficulty involved may have deterred other jurisdictions from undertaking similar reforms. He noted that the CCRC work not only benefits the District but may serve as a model for other jurisdictions around the country.
 - iv. The OAG Representative thanked the Advisory Group for its camaraderie and ability to work together and form consensus despite members having disagreements on specific issues.
 - v. Paul Butler also thanked the CCRC staff and the fellow Advisory Group members.

III. Adjournment.

- a. The Executive Director adjourned the meeting at 10:30 a.m.